

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JASON ALTHEIDE,

Case No. 3:22-cv-00143-ART-CLB

Plaintiff,

ORDER

v.

CALVIN JOHNSON, *et al.*,

Defendants.

I. DISCUSSION

Plaintiff initiated this action on March 23, 2022, with a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1-1.) On April 8, 2022, Plaintiff filed a first amended complaint, and on April 29, 2022, Plaintiff filed a second amended complaint. (ECF Nos. 3, 5.) Plaintiff has now filed a motion entitled “motion to withdraw.” (ECF No. 6.) In the motion Plaintiff states simply “Altheide withdraws complaint as State would better suit jurisdiction of authorities.” (*Id.* at 1.) It appears that Plaintiff is stating that he wishes to pursue his claims in Nevada State Court, rather than proceed in federal court. The Court construes this document as a motion for voluntary dismissal.

Under Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an action without a court order by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). The complaint has not been served on the Defendants, and thus the Defendants have not filed an answer or a motion for summary judgment. Accordingly, the Court grants Plaintiff’s motion to voluntarily dismiss this action without prejudice.

1 If the Court has misunderstood Plaintiff's filing, Plaintiff may file a motion
2 for reconsideration within 30 days advising the Court that he did not intend to
3 file a motion for voluntary dismissal and requesting that this case be reopened.

4 **II. CONCLUSION**

5 For the foregoing reasons, it is ordered that the Court construes ECF No.
6 6 as a motion for voluntary dismissal, and the Court grants the motion.

7 It is further ordered that if Plaintiff did not intend to file a motion for
8 voluntary dismissal, he may file a motion for reconsideration within 30 days
9 requesting that this case be reopened.

10 It is further ordered that Plaintiff's application to proceed *in forma pauperis*
11 (ECF No. 1) is denied as moot.

12 It is further ordered that this action is dismissed in its entirety without
13 prejudice.

14 It is further ordered that the Clerk of the Court will enter judgment
15 accordingly.

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17 DATED THIS 10th day of May 2022.

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United States District Court
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